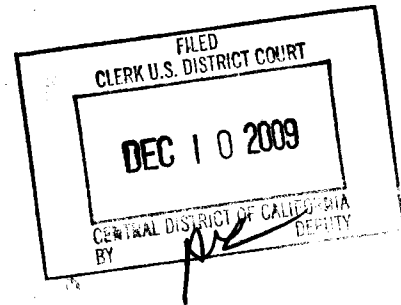


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14 *Attorneys for Plaintiff*
 15 PINKBERRY, INC.



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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 PINKBERRY, INC., a California
 19 corporation,

20 Plaintiff,

21 vs.

22 JTRA, LLC, d/b/a. YOBERRY, a Florida
 23 Limited Liability Company,

24 Defendant.

Case No. CV 08-05930SVW(CWx)

The Honorable Judge Stephen V. Wilson

~~PROPOSED~~ CONSENT
 JUDGMENT AND PERMANENT
 INJUNCTION

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

Pursuant to the parties' stipulation, and good cause appearing, IT IS HEREBY ORDERED that final judgment be and hereby is entered as follows:

1. Pinkberry owns all rights in and to the United States Trademark Registration for the following marks (collectively, "PINKBERRY Marks"), each of which is valid and subsisting:

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
PINKBERRY	3,302,143	October 2, 2007	Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies
PINKBERRY	3,460,697	July 8, 2008	Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants
Stylized Leaf and Berry Swirl Design	3,461,027	July 8, 2008	Express restaurant services, food kiosk services, and carry-out restaurant services featuring frozen yogurt-based desserts, frozen dairy desserts, smoothies and shaved ice
PINKBERRY & Stylized Leaf and Berry Swirl Design	3,460,702	July 8, 2008	Restaurant services; restaurants; take-out restaurant services; café-restaurants; fast-food restaurants

2. The PINKBERRY Marks are coined, arbitrary and famous marks that are entitled to broad protection.

3. In addition, Pinkberry owns and publishes, among other artwork and graphics, the photograph depicted in **Exhibit A** to promote and brand its services and products (the "PINKBERRY Photograph").

4. Yoberry has used the mark and logo (the "Yoberry Marks") and photographs depicted in **Exhibit B** attached hereto in its operation of café-style restaurants in which it sells the same or similar products as Pinkberry.

1 4. On or about September 10, 2008, Pinkberry commenced an action for
2 damages and equitable relief in the United States District Court for the Central District
3 of California against Defendant, entitled Pinkberry, Inc. v. JTRA LLC d/b/a Yoberry,
4 CV 08-05930 SVW(CWx), asserting claims for federal trademark dilution, federal
5 trademark infringement, federal false designation of origin, California unfair
6 competition, injury to business reputation, and unjust enrichment (the "Action").

7 5. Defendant has admitted that the Yoberry Marks are a colorable imitation
8 of the distinctive PINKBERRY Marks, and Defendant's photographs depicted in
9 **Exhibit B** are unlawful copies of the PINKBERRY Photograph.

10 6. Defendant has represented to Pinkberry that it will: (1) cease and refrain
11 from using the YOBERRY Marks; (2) cease and refrain from using any other name or
12 mark that uses the word "BERRY" in a non-descriptive manner; (3) cease and refrain
13 from using any mark or logo that consists of a swirl design, and (4) cease and refrain
14 from using any of Pinkberry's artwork and graphics, including the PINKBERRY
15 Photograph.

16 7. Accordingly, Defendant has consented to a Permanent Injunction and
17 Consent Judgment as follows:

18 **A. Permanent Injunction**

19 Defendant, its subsidiaries, affiliates, agents, servants, employees, attorneys,
20 representatives, successors and assigns, and all persons, firms or corporations in active
21 concert or participation with Defendant, shall be permanently restrained and enjoined
22 from:

23 (1) Using any trade name or mark that includes the word "BERRY" in
24 connection with the sale, distribution or promotion of any goods or services, including
25 on or with Defendant's signage, uniforms, cups, napkins, decor, menus, banners,
26 advertisements, Internet websites, coupons and any other promotional materials,
27 except that Defendant may make limited use of the word "berry" in a non-trademark
28 or descriptive fashion to describe berry flavors, ingredients or toppings for its

1 products;

2 (2) Using any mark or logo that consists of a "swirl" or "swirl-like" design in
3 connection with the sale, distribution or promotion of any goods or services, including
4 on or with Defendant's signage, uniforms, cups, napkins, decor, menus, banners,
5 advertisements, Internet websites, coupons and any other promotional materials;

6 (3) Using any of Pinkberry's artwork and graphics, including the
7 PINKBERRY Photograph;

8 (5) Engaging in any conduct that tends falsely to represent, or is likely to
9 confuse, mislead or deceive consumers or members of the public that Defendant's
10 actions, sales, services, and/or products are sponsored by, approved by, licensed by, or
11 connected or otherwise affiliated with Pinkberry or its subsidiaries; and

12 (6) Diluting, blurring or tarnishing the distinctive and famous nature of
13 Pinkberry's name and the PINKBERRY Marks.

14 **B. Compliance with Injunction Order**

15 Defendant shall provide proof of compliance with the permanent injunction
16 order in the form of photographs and a compliance statement. Such proof shall be
17 delivered to Pinkberry's counsel of record every six months for a period of eighteen
18 (18) months from the date of entry of this Judgment.

19 **C. Destruction of Infringing Materials**

20 Within thirty (30) days of entry of judgment for Pinkberry, Defendant, its
21 subsidiaries, affiliates, agents, servants, employees, attorneys, representatives,
22 successors and assigns, and all persons, firms or corporations in active concert or
23 participation with Defendant, shall deliver up for destruction to Pinkberry:

24 (1) Any and all goods, apparel, merchandise, products, labels, signs,
25 packaging wrappers, containers, advertising or promotional materials, letterhead,
26 business cards, and any other writing materials used in its business, which display,
27 reproduce, consists, or bear the Yoberry Marks or the PINKBERRY Photograph;

28 (2) Any screens, designs, blueprints, drafts, patterns, plates or negatives used

1 specifically in connection with the Yoberry Marks or the PINKBERRY Photograph,
2 emblems, symbols, names, designations, terminology; and

3 (3) Any and all goods, apparel, merchandise, products, labels, signs,
4 packaging wrappers, containers, advertising or promotional materials, letterhead,
5 business cards, and any other writing materials used in its business, which falsely
6 display, reproduce, copy, counterfeit, imitate or bear the PINKBERRY Marks and its
7 photographs, artworks, or any simulation or variant thereof.

8 **D. Violation of Injunction**

9 Violation of this Consent Judgment and Permanent Injunction shall subject
10 Defendant to contempt and any remedy available at law or equity, including, but not
11 limited to, injunctive relief, monetary damages and the award of reasonable attorneys'
12 fees and costs in enforcing this injunction.

13 **E. Jurisdiction**

14 This Court shall retain jurisdiction over any enforcement action of this
15 injunction.

16 **F. Judgment**

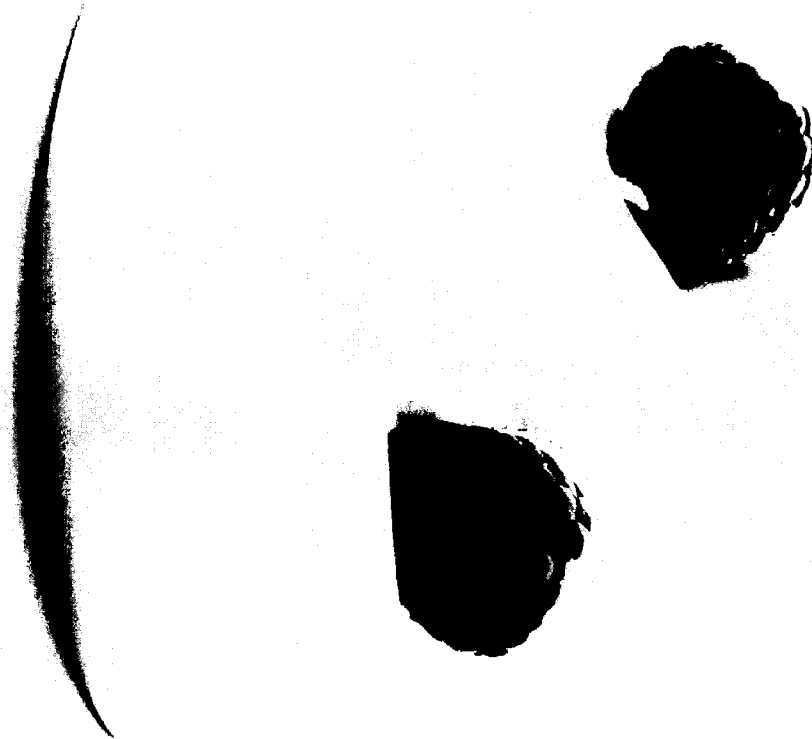
17 Judgment on all claims and causes of action shall be, and is hereby, entered in
18 favor of Plaintiff Pinkberry, Inc. accordingly. Except as provided for in the
19 Settlement Agreement, each side is to bear its own attorneys' fees, costs and expenses.

20 **IT IS SO ORDERED.**

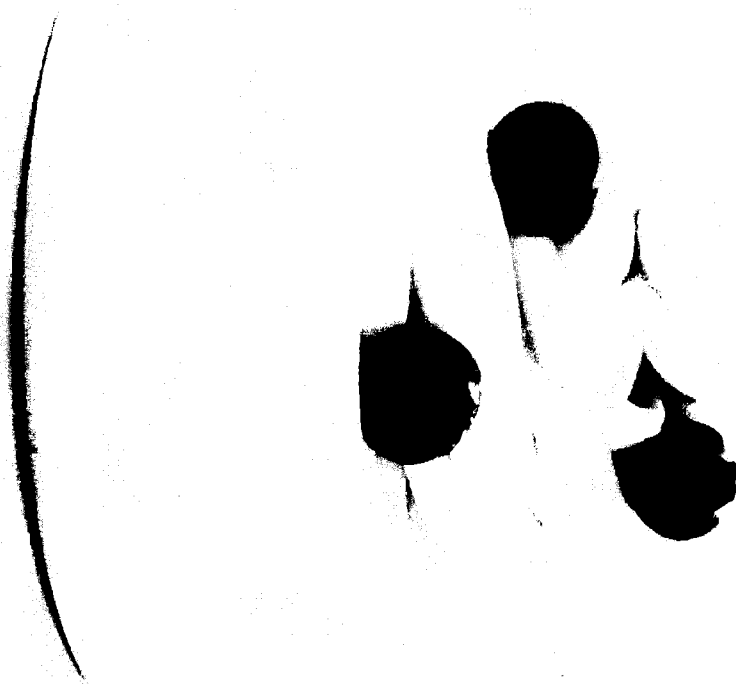
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22 DATED: October 9, 2009

23 
24 STEPHEN V. WILSON
25 United States District Court Judge
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EXHIBIT A







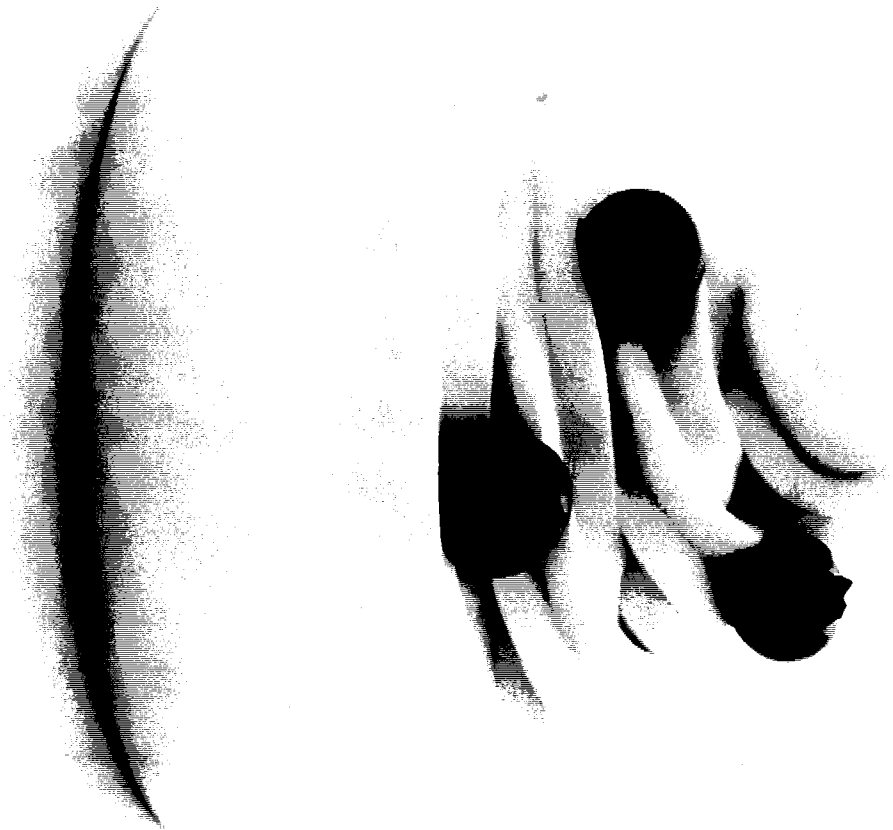
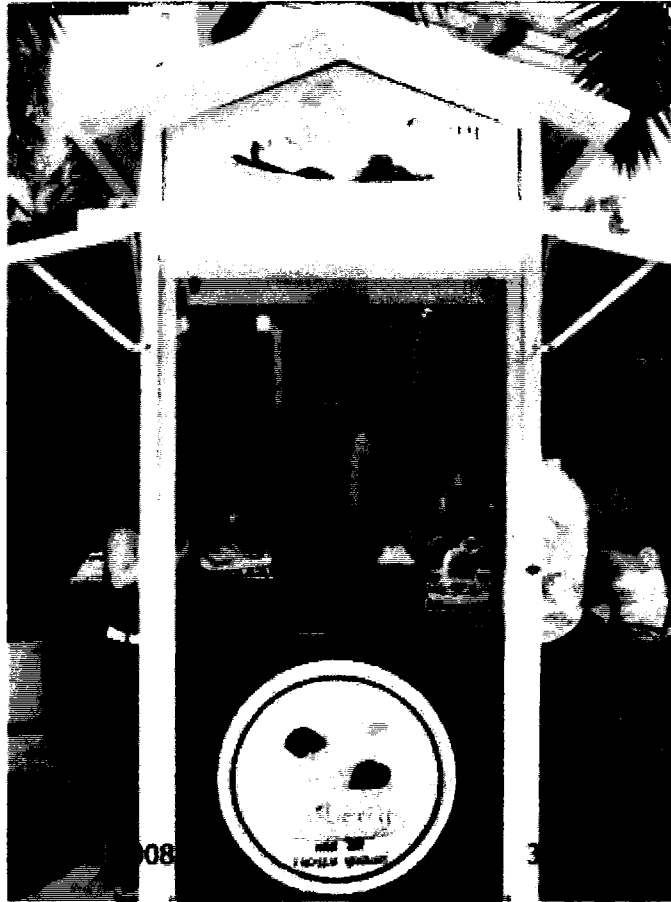


EXHIBIT B





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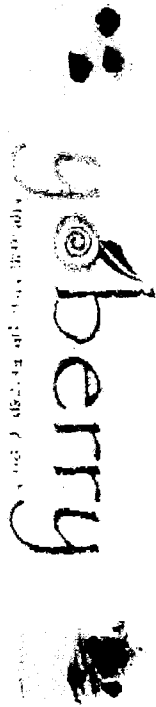
Yo Berry Yogurt

Yo Berry Yogurt

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Thu 9:42



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franchisee please click here

Yo Berry Yogurt is a leading brand of yogurt in the United States. We are now accepting franchisees for the United States and Canada.

For more information on becoming a franchisee, please visit our website at www.yoberryyogurt.com



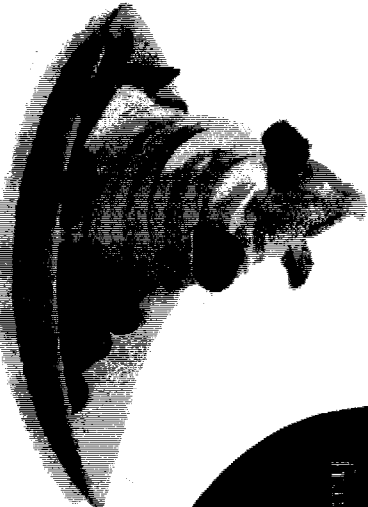
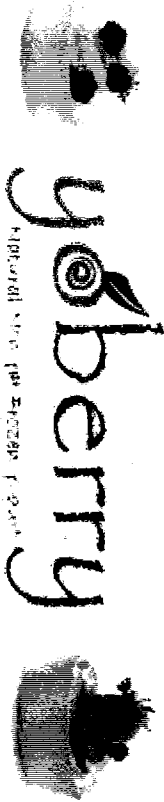
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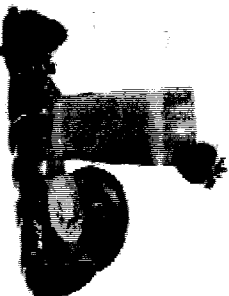
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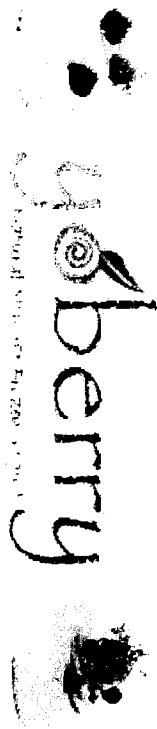


Yo Berry Yogurt is a franchise opportunity available in the United States and Canada. For more information, please visit our website at <http://yoberryyogurt.com>.



Yo Berry Yogurt is a franchise opportunity available in the United States and Canada. For more information, please visit our website at <http://yoberryyogurt.com>.

We are currently seeking franchisees throughout the United States and Canada.



THE ONLY ONE FOR YOUR INTEREST IN YOUR FIRM.
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PHASE-RELATION VECTOR RESPONSES AND COHERENCE BROADENING

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Request/Comments:

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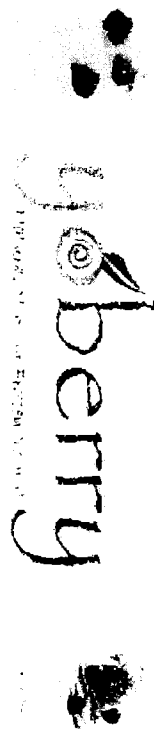
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13101 collins@co.ford.ny.us

Phone - 261-2024

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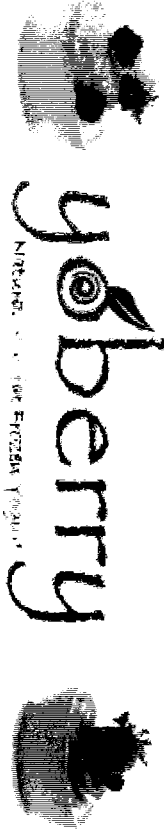
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PRIVACY POLICY CONTACT US

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Fax: 954-553-9767